

1 DAVID BURCHARD  
2 CHAPTER 13 TRUSTEE  
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6 UNITED STATES BANKRUPTCY COURT  
7  
8 NORTHERN DISTRICT OF CALIFORNIA  
9  
10 SANTA ROSA DIVISION

11 In re: ) Bankruptcy Case No. 10-1-0527 AJ  
12 )  
13 MARILIZA L. AURELIO, ) Chapter 13  
14 )  
15 Debtor. ) **MOTION TO DISMISS CASE;**  
16 ) **DECLARATION OF DAVID**  
17 ) **BURCHARD IN SUPPORT**  
18 )  
19 ) Hearing Date and Time:  
20 ) DATE: May 3, 2010  
21 ) TIME: 1:30 p.m.  
22 ) PLACE: Hon. Alan Jaroslovsky  
23 ) 99 "E" Street,  
24 ) Santa Rosa, CA  
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19 **TO THE HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY**  
20 **JUDGE, DEBTOR'S COUNSEL, THE DEBTOR AND OTHER PARTIES IN INTEREST:**

21 David Burchard, Chapter 13 Trustee for the Santa Rosa Division of the Bankruptcy Court  
22 for the Northern District of California, hereby requests the Court enter an order: (1) dismissing this  
23 case for lack of eligibility pursuant to 11 U.S.C. §109(e).  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 On February 24, 2010, Mariliza L. Aurelio ("Debtor"), filed for bankruptcy protection under  
5 Chapter 13 of the Bankruptcy Code in the Santa Rosa Division of the Bankruptcy Court for the  
6 Northern District of California. Pursuant to 11 U.S.C. §341(a) of the Bankruptcy Code, the  
7 Meeting of the Creditors is scheduled for April 21, 2010, at 1:00 p.m. On March 11, 2010, the  
8 Debtor filed her schedules listing their debts as follows: Schedule D lists \$814,252.55 in  
9 noncontingent, liquidated and secured debts. The unsecured portion of the secured debt totals  
10 \$452,252.88. The Debtor's Schedules E and F list unsecured, noncontingent, liquidated debts  
11 totaling \$332,269.00. The Debtor's unsecured debt as listed on Schedules D, E and F totals  
12 \$784,521.88.

13 **II.**

14 **DISCUSSION**

15 **A. Debtor's Case Should be Converted to Another Chapter or Dismissed Given Debtor's**  
16 **Unsecured Debt Total Exceeds Debt Limitations Pursuant to 11 U.S.C. §109(e)**

17 Pursuant to 11 U.S.C. §109(e), only an individual with regular income that owes, on the  
18 date of filing of the petition, noncontingent, liquidated and unsecured debts less than \$336,900 and  
19 noncontingent, liquidated and secured debts of less than \$1,010,650 may be a debtor under Chapter  
20 13 of Title 11. The Debtor's Schedule D lists \$814,252.55 noncontingent, liquidated and secured  
21 debts. The unsecured portion of the secured debt totals \$452,252.88. The Debtor's Schedules E  
22 and F list \$332,269.00 in noncontingent, liquidated, and unsecured debt. The Debtor's Schedule D,  
23 E and F appear to have been filed in good faith, the schedules do not list any debts as disputed,  
24 unliquidated or contingent, and therefore the debt in these schedules should be included in debt  
25 limitation calculations. *See In re Scovis*, 249 F.3d 975 (9<sup>th</sup> Cir. 2001). In determining the total  
26 amount of unsecured debt of a debtor, the unsecured portion of secured debt of the debtor is added  
27 to the total of unsecured debt listed in schedule E and F for purposes of calculating the debtor's  
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unsecured debt total. *See In re Scovis*, 249 F.3d 975, 983 (9<sup>th</sup> Cir. 2001).

Secured Debt:	\$814,252.55
Unsecured Portion of Secured Debt:	<b>\$452,252.88</b>
Priority Unsecured Debt:	<b>\$0.00</b>
Nonpriority Unsecured Debt:	<b>\$332,269.00</b>
<b>Total Unsecured Debt:</b>	<b>\$784,521.88 - \$336,900 = <u>\$447,621.88</u></b>

After adding the unsecured portion of the Debtor's secured debt and the Debtor's unsecured debt, the Debtor's total unsecured debt equals \$784,521.88, \$447,621.88 over the unsecured debt limitation pursuant to 11 U.S.C. §109(e).

### III.

#### CONCLUSION

David Burchard, Chapter 13 Trustee, respectfully moves the Bankruptcy Court for an order converting the case to a different chapter, dismissing this case for lack of eligibility pursuant to 11 U.S.C. §109(e) and other such relief the court deems just and proper.

Dated: March 29, 2010

/s/David Burchard.  
David Burchard,  
Chapter 13 Trustee

1        **DECLARATION OF DAVID BURCHARD, CHAPTER 13 TRUSTEE IN SUPPORT OF**  
2        **OBJECTION TO CONFIRMATION**

3        I, David Burchard, the duly appointed Chapter 13 Trustee in this case declare as follows:

4                1.        On February 24, 2010, Mariliza L. Aurelio ("Debtor"), filed for bankruptcy  
5        protection under Chapter 13 of the Bankruptcy Code in the Santa Rosa Division of the Bankruptcy  
6        Court for the Northern District of California.

7                2.        Pursuant to 11 U.S.C. §341(a) of the Bankruptcy Code, the Meeting of the  
8        Creditors is scheduled for April 21, 2010, at 1:00 p.m.

9                3.        On March 11, 2010, the Debtor filed her schedules listing their debts as follows:  
10       Schedule D lists \$814,252.55 in noncontingent, liquidated and secured debts.

11               4.        The unsecured portion of the secured debt totals \$452,252.88.

12               5.        The Debtor's Schedules E and F list unsecured, noncontingent, liquidated debts  
13       totaling \$332,269.00.

14               6.        The Debtor's unsecured debt as listed on Schedules D, E and F totals \$784,521.88.

15  
16        I declare under penalty of perjury of the laws of the United States of America that the  
17        foregoing is true and correct, that I have personal knowledge thereto, that if called as a witness I  
18        could testify competently thereto. This declaration was executed on March 29, 2010, in Foster City,  
19        California.

20                                /s/David Burchard  
21                                David Burchard,  
22                                Chapter 13 Trustee  
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